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No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1983

JOHN WILLIAM ELKINS,

Petitioner,

vs.

BOARD OF LAW EXAMINERS
OF NORTH CAROLINA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NORTH CAROLINA

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Petitioner, In Propria Persona

QUESTIONS PRESENTED

1. Whether the Board of Law Examiners and the North Carolina Supreme Court failed to adequately consider and weigh Petitioner's substantial evidence presented to establish a *prima facie* showing of good moral character and thereby contravened the Due Process Clause of the Fourteenth Amendment?

2. Whether the Board and the Court rendered a conclusion as to Petitioner's moral character which is not rationally related to one isolated instance of alleged misconduct, based entirely on circumstantial evidence, occurring six years prior to Petitioner's application for admission to the North Carolina Bar and thereby violated due process?

3. Whether the Board and the Court violated due process by rendering a conclusion as to Petitioner's moral character based on a finding that he allegedly gave false testimony regarding one incident of alleged misconduct where said finding is made on a

greater-weight-of-the-evidence standard of proof and reviewed as to whether there was substantial evidence in support of the finding?

4. Whether there was sufficient evidence in the record to support the Board's finding that Petitioner testified falsely concerning one incident of alleged misconduct such that the Board's and the Court's determination of Petitioner's moral character is rationally related to any such evidence?

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The Petitioner, John William Elkins, respectfully prays that a Writ of Certiorari issue to review the reversal on appeal by the North Carlina Supreme Court of a decision by the Superior Court of Wake County reversing a decision by the Board of Law Examiners of North Caplina to deny Petitioner his right to take the February, 1981 North Carolina Bar Examination.

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OPINIONS IN LOWER COURTS

The opinion of the North Carolina Supreme Court in the case sub judice, entitled In the Matter of John William Elkins, was rendered on May 3, 1983 and is reported at 308 NC 317, 302 SE2d 215. (Appendix, pp. 1-36) A Petition for Rehearing was summarily denied without opinion on July 7, 1983. (Appendix, p. 64) The other orders and decisions in this case appear in the Appendix but were not reported.

JURISDICTION

The judgment on which review is sought was rendered by the North Carolina Supreme Court on May 3, 1983. This Petition was timely filed within 90 days of the denial on July 7, 1983 by the North Carolina Supreme Court of a Petition for Rehearing. This Court's jurisdiction is invoked pursuant to 28 USC 1257(3).

CONSTITUTIONAL PROVISION INVOLVED

Section 1 of the Fourteenth Amendment to the United States Constitution provides in pertinent part: "No State shall ...

deprive any person of life, liberty or property, without due process of law ... "

STATEMENT OF THE CASE

Petitioner applied to take the February, 1981 North Carolina Bar Examination by written application. No contention is made that he failed to provide all information requested. On January 29, 1981, Petitioner appeared before a three-member panel of the Board of Law Examiners (hereinafter, "Board") to answer questions concerning a 1975 arrest and related civil suit. In an order dated January 30, 1981, the Board denied Petitioner's application to take the bar examination based on his failure to demonstrate sufficiently good moral character.

Petitioner was permitted to take the February, 1981 bar examination pending his appeal. The results of the examination have been ordered permanently sealed.

Petitioner appealed to the full Board and was heard on May 15, 1981. The subject

of the Board's inquiry concerned an arrest of Petitioner on July 14, 1975 in Chapel Hill, North Carolina for illegal entry and peeping secretly. At the time, Petitioner was 22 years old and finishing work on a senior honors thesis in college. The facts underlying the arrest are largely undisputed and have been thoroughly covered in a portion of the opinion of the North Carolina Supreme Court. Those facts, appearing at pages 6-11 of the Appendix, are hereby incorporated by reference. Any dispute in the reporting of the facts will be discussed infra under Reasons for Granting the Writ.

The Petitioner pleaded not guilty in a court trial on September 21, 1975 in Orange County District Court. At the conclusion of the trial, a fine of $50.00 was imposed and Petitioner was given a prayer for judgment.

A civil suit was filed against Petitoner in 1976 alleging invasion of privacy arising out of the allegations on which he was arrested

in 1975. The suit was tried before a jury in May, 1977 in Orange County Superior Court. At the conclusion of the plaintiff's evidence, the Court granted a directed verdict for the defendant, Petitioner herein.

The Board issued an Order dated August 21, 1981, (Appendix, pp. 37-51), in which it made 18 findings of fact, all relating to the July 14, 1975 incident or to Petitioner's testimony before the Board concerning the incident. The Board found that Petitioner committed misconduct on July 14, 1975 and gave false testimony to the Board about it. It also found that he made false statements in the interrogatories in the civil suit. The Board concluded that the misconduct and false testimony were " singularly and in conjunction" sufficient to deny his application. (Appendix, p. 50)

The Petitioner appealed the decision to the Superior Court of Wake County. On May 26, 1982, Hon. F. Gordon Battle issued a Judgment (Appendix, pp. 51-63), in which he over-

turned the Board's decision. The Court ruled that the Petitioner made a prima facie showing of good moral character; that the Board's findings 10 through 18 were not supported by substantial evidence; that even if these findings had been supported by substantial evidence, they would not be sufficient to rebut the applicant's prima facie showing of good moral charcter; that the single act of alleged misconduct was not sufficient to rebut the evidence of theapplicant's otherwise unblemished record; that where the entire question revolved around "intent", to deny applicant's request to stand the bar examination wa an " ... unreasonable price for (him) to pay for maintaining his innocence..." (Appendix, pp. 60-63)

The Board appealed the decision to the North Carolina Supreme Court which ruled in a published opinion that Petitioner is not presently possessed of such good moral character as to entitle him to take the February, 1981 bar examination. The Court subsequently

denied a Petition for Rehearing on July 7, 1983.

The points at which the constitutional questions here raised were argued in the lower courts are set forth in the Appendix at pages 65-74.

REASONS FOR GRANTING THE WRIT

I. THE BOARD OF LAW EXAMINERS AND THE LOWER COURT HAVE NOT ADEQUATELY CONSIDERED PETITIONER'S SUBSTANTIAL PRIMA FACIE SHOWING OF GOOD MORAL CHARACTER AND HAVE THEREBY CONTRAVENED PRINCIPLES OF DUE PROCESS.

States are bound by fairness and due process to have an orderly and rational procedure for determining the fitness of applicants to the bar. Konigsberg v. State Bar of California (1957) 353 U.S. 252; Schware v. Board of Bar Examiners (1957) 353 U.S. 232.

North Carolina has adopted the procedures suggested in Konigsberg, supra, whereby the applicant has the burden of showing his good moral character and, once shown, the licensing board may seek to rebut the showing with specific instances of misconduct. See e.g. In re Rogers (1979) 297 N.C. 48 at 57, 253 S.E.2d 918.

The Petitioner presented strong evidence of good character at the hearing before the Board. He was admitted to the State Bar of California in 1979 after full disclosure of the alleged misconduct and the criminal proceedings and civil suit arising therefrom. He provided evidence that he is a member in good standing of that Bar. (Application, Appendix, pp. 82-83)

The petitioner graduated with honors in 1975 from the University of North Carolina where he had been active in campus service projects. (Application, ST 52)* He graduated from the University of North Carolina Law School in 1979. (Application) While there, he participated in a prisoner legal assistance clinic his third year. (ST 47)

The director of the clinic, Professor David Rudolf, testified at the hearing that he worked closely with Petitioner during the 1978-79 school year and found he was "conscientious, hard working, took initiative." (ST 47, RT 148) Mr. Rudolf described Petitioner as having done "a marvelous job on every single case that he had" and that he "... will make an absolutely excel-

* "ST" refers to settled transcript on appeal. "RT" refers to full reporter's transcript.

lent attorney who cares about his clients, and who does whatever he can within the bounds of ethics to represent his clients' interests." (ST 47-48, 49) Mr. Rudolf also stated he did not believe that the applicant had committed the alleged misconduct even on the strange facts of this case, given what he knows of Petitioner's integrity. (ST 50)

Grayson L. Reeves, Jr., an assistant district attorney and close friend of Petitioner for nine years, testified he had known Petitioner in college as a friend and fellow worker in campus activities and as a law student. He stated:

> [Petitioner] ... is of impeccable moral character. I've always felt that. I think he is entitled to the high regard and confidence of the public that a lawyer should be entitled to. I think he would prove to be an asset to the profession and a credit to the profession. (ST 54, RT 169-170)

A friend of fourteen years through high school and a former roommate during the months following the July 1975 incident, Paul Garrison, Jr., testified that the Petitioner is of "very high character" and would be an "excellent law-

yer." (ST 56)

Others who had known Petitioner for up to 20 years provided affidavits or letters testifying to Petitioner's high moral character. (Application, ST 114-115) Petitioner's father and older brother also testified as to Petitioner's high moral character. (ST 59-64)

In its findings of fact, the Board did not make any finding of a prima facie showing of good moral character. In a departure from previously reported cases on the subject of admission to the Bar, the North carolina Supreme Court made only passing reference to Petitioner's prima facie showing of good moral character. (Appendix, p. 58) Cf. In re Moore (1981) 301 N.C. 634 at 640, 272 S.E.2d 826; In re Rogers (1979) 297 N.C. 48 at 52-54, 68, 253 S.E.2d 912.

There is, therefore, no indication whether the Board or the Court actually weighed the single incident of alleged misconduct against Petitioner's substantial evidence of good moral character. Such a weighing process is required to afford the applicant due process. Konigsberg

v. State Bar of California (1961) 366 U.S. 36, 42-43; In re Rogers, supra, 297 N.C. 48 at 57.

The words of Mr. Justice Black in Konigsberg (I), supra, 353 U.S. 252 at 273-74, are especially apropos:

> A lifetime of good citizenship is worth very little if it is so frail that it cannot withstand the suspicions which apparently were the basis of the Committee's action.

II. THERE IS NO RATIONAL RELATIONSHIP BETWEEN PETITIONER'S FITNESS TO PRACTICE LAW IN NORTH CAROLINA IN 1981 AND ONE INCIDENT OF ALLEGED MISCONDUCT IN 1975, SUPPORTED ONLY BY CIRCUMSTANTIAL EVIDENCE.

Mr. Justice Black, writing for the majority of this Court in Baird v. State Bar of Arizona (1971) 401 U.S. 1, stated a fundamental principle at base of every applicant's attempt to gain admission to the bar:

> The practice of law is not a matter of grace, but of right for one who is qualified by his learning and his moral character. Baird, supra at 9.

The Board and the lower court have raised one incident occurring in 1975 when the Petitioner was 22 years old and a senior in college as a stumbling block fatal to his admission to the

North Carolina Bar.

The North Carolina Supreme Court, itself has stated,

> "Whether a person is of good moral character is seldom subject to proof by reference to one or two incidents." In re Rogers (1979) 297 N.C. 48 at 58; 253 S.E.2d 918.
>
> "An application for admission to the bar may not be denied on the basis of suspicions or accusations alone." Id.

The test in this Court on review of a State's refusal to license a bar applicant, was articulated by Mr. Justice Black in Schware v. Board of Bar Examiners, (1957) 353 U.S. 232, as follows:

> "A State can require high standards of qualification, such as good moral character or proficiency in its law, before it admits an applicant to the bar, but any qualification must have rational connection with the applicant's fitness and capacity to practice law. [Citations] ... Even in applying permissible standards, officers of a State cannot exclude an applicant when there is no basis for their finding that he fails to meet these standards, or when the action is invidiously discriminatory. [Citation]" Schware, supra, at 240.

The case at bench is similar in posture to that of In re Rogers, supra, 297 N.C. 48 in which the Court found insubstantial evidence of

misconduct on the part of the applicant. The applicant denied all involvement in two incidents of alleged misconduct despite circumstantial evidence and tentative identification by an eyewitness that the applicant did commit the misconduct. Rogers, supra, at 50-51, 66-67.

In the case sub judice, the Board and the Court disregarded important evidence in reaching a conclusion. North Carolina law requires that the Court take into account all that "fairly detracts from the weight of the Board's evidence" and all "undisputed facts which favor the applicant's position." In re Moore, supra, 301 N.C. 634 at 642. First, there was uncontradicted testimony that the camera which Petitioner took into his attic on July 14, 1975 had a roll of film in it which was fully exposed with the exception of possibly one or two trailer frames. (ST 41-42, 86, 89) The record is devoid of expert testimony as to whether a photograph could have been taken of an animated object through the exhaust fan vent in question from a dark attic without flash equipment. Lt. Snipes of the

Chapel Hill Police Department testified at the civil trial that the film in the camera was developed by the police, was fully exposed, and contained pictures of a fireworks display and a sunrise at the beach. (ST 42) This evidence indicates there was not substantial evidence that Petitioner intended to photograph anyone from the attic.

The fact that Petitioner had on a T-shirt and short pants (ST 9, 90) indicates that he did not intend, upon entering the attic, to crawl around in the blown insulation material and move to the other end of the attic which turned out to be over the neighbor's apartment. (ST 16-18, RT 32, 38-40)

A fortiorari, the fact that the exhaust fans, according to Lt. Snipes, (ST 94), afforded a "fairly clear" view of a "large area" of the bathrooms indicates that Petitioner did not drill the holes in one bathroom ceiling with knowledge of its location or for the purpose of peeping

on his neighbors.[1] Petitioner's unrebutted testimony that he had never been in the adjoining apartment, that the testimony at the civil trial indicated a floorplan different from his own apartment, and that there was no means of corresponding the floorplans of either apartment with anything in the attic supports his testimony that he drilled the holes randomly. (ST 27, 39-41, 85, RT 116-126)

In addition, the fact that the location of the entrance to the attic which Petitioner constructed in his own bathroom was near the end of the building opposite the adjoining apartment and was no closer to the adjoining apartment than the perfectly accessible hall entrance supports Petitioner's testimony that he constructed the entrance out of boredom and to provide a means of ingress and egress which would not disturb his roommates. (ST 92, 11-12) The

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[1]The Supreme Court's opinion states incorrectly that holes were drilled in two bathrooms. (Appendix, p. 31) Evidence and findings of the Board show that holes were drilled in, at most, one bathroom. (Appendix, p.42, ST 93)

floorplan was such that if Petitioner had intended to use the entrance as a surreptitious entry to peep on his neighbors, he would have had to walk right over his roommates' bedrooms to reach the portion of the attic over the neighbor's apartment. Too, the cover made over the entrance was rough and did not disguise the entryway. (ST 11-12, 85-86) Since Petitioner was using his bedroom only intermittently that summer, and because his roommates had access to the bathroom (ST 8-9, 12, 85), it is not reasonable to conclude Petitioner was attempting to disguise the entrance.

For the same reasons, had Petitioner intentionally locked the door to his bathroom, he would have only drawn attention to it. If he knew his roommates would not use it, there was no reason for him to intentionally lock the door. Anyone entering the apartment could have locked the door by pushing the lock button and closing the door. Likewise, Petitioner explained that, on other occasions, the button had pressed in when the door was opened against the wall,

causing the door to lock when closed from the outside. (ST 13,75-76,78-79,RT 21-22,250-256,260)

The fact that the evidence showed that an academic book and an inch thick stack of notes on Petitioner's honors thesis were found in the attic near two boards a few feet from the attic entrance (ST 10,85,93,110) lends considerable weight to Petitioner's consistent explanation that he was in the attic to isolate himself and try to restore his concentration on his school work.

The only evidence in support of the Board's conclusion that Petitioner committed misconduct was Petitioner's own testimony and the circumstances with which he admitted his connection at the time. At most, the evidence casts suspicion on Petitioner. There is no evidence in the record which rationally justifies the finding that this single incident of alleged misconduct can rebut Petitioner's substantial evidence of good moral character and render him morally unfit to practice law in North Carolina. Schware, supra, 353 U.S. at 247-248; Rogers,

supra, at 68; Florida Board of Bar Examiners Re: L.K.D. (1981) ___ FLA ___, 297 So.2d 673.

III. THE BOARD OF LAW EXAMINERS VIOLATED DUE PROCESS BY APPLYING A GREATER WEIGHT OF THE EVIDENCE STANDARD OF PROOF TO REACH A CONCLUSION THAT THE APPLICANT GAVE FALSE TESTIMONY TO THE BOARD.

The Board and the North Carolina Supreme Court reasoned that if the Board found by the greater weight of the evidence that Petitioner was in fact guilty of the alleged misconduct of July 14, 1975, then it could automatically leap to the conclusion that Petitioner's innocent explanation of events in question was false. The decision of the Court placed its main emphasis on the findings of false testimony concerning the incident rather than the incident itself. (Appendix, pp. 33-36)

Each of the cases relied upon by the Court in determining that material false testimony before the Board is a ground for disqualification involved failure to report an incident to the licensing board or manifest, documented dishonesty appearing on the face of the application when compared to prior applications or testimony of

the applicant. These cases applied, albeit sub silentio, a beyond a reasonable doubt standard of proof to determine the false or misleading nature of statements by the applicant. The Court in the case at bar cited five cases including: In re Beasley (1979) 243 Ga. 134, 252 S.E.2d 615 (Improperly stating felony charge as misdemeanor and failing to list contemptuous dereliction of child support on application); Application of Walker (1975) 112 Ariz. 134, 539 P.2d 891, cert. denied 424 U.S. 956 (Failing to register for draft for eight years and failure to disclose this fact on application); In re Willis (1975) 288 N.C.1, 215 S.E.2d 771 (Failure to disclose criminal charges and conviction and discipline in Air Force and mistating on application date of arrest, charges, and circumstances of Air Force discharge); Greene v. Committee of Bar Examiners (1971) 4 Cal. 3d 189, 480 P.2d 976 (Failure to list on application civil litigation and arrest warrant and inconsistencies in places of residence and legal experience vis á vis applications to other bars); Petition of Bowen (1968) 84 Nev. 681,

447 P.2d 658 (Concealing past record on application and "undisputed proof" of material false statements on applications).

None of these cases uphold a denialof an application because of findings of false testimony, vis á vis a denial or innocent explanation, predicated on a finding of misconduct.

Additionally, the North Carolina Supreme Court cites In re Gould, (1957) 4 App.Div.2d 174, 164 NYS2d 48 for the proposition that the Board can reject an applicant's explanation of events in toto should it find the testimony "inherently incredible."

Gould involved a disciplinary proceeding of an attorney who admitted the acts of solicitation and assault constituting the misconduct but attempted to explain and mitigate it by saying he was testing his victims' temperaments for employee positions. The Court found the story "patently incredible" and rejected it, but was concerned with the misconduct rather than the false testimony. Gould, supra, 164 NYS2d 48 at 49. Gould, therefore, is inapposite to the case at bench.

California has expressly adopted the beyond a reasonable doubt standard to resolve whether the applicant has given false or misleading testimony to a licensing board. Hall v. Committee of Bar Examiners (1979) 25 Cal.3d 730 at 744, 602 P.2d 768; Siegel v. Committee of Bar Examiners (1973) 10 Cal.3d 156, at 178-179, 514 P.2d 967. Other jurisdictions seem to apply such a standard sub silentio to resolve credibility issues. See e.g. In re Application of G.L.S. (1982) 292 Md. 378, 439 A.2d 1107 (Failure to fully disclose prior felony conviction not intentional); Florida Board of Bar Examiners Re: L.K.D. (1981) ___ Fla. ___, 397 So.2d 673 (Credibility of applicant in denying petty theft resolved in favor of applicant); Reese v. Board of Commissioners (1980) ___ Ala. ___, 379 So.2d 564 at 567 (Failure to disclose criminal charges and detentions not intentional); Application of Henigson (1975) ___ Or.___, 543 P.2d 269 (Credibility issue involving witness saying he did not sell stolen property to applicant was resolved in favor of applicant).

The North Carolina Supreme Court itself said

in In re Moore (1981) 301 N.C. 634, 272 S.E.2d 826 the following:

> "...[W]e question whether the Board should rely on a finding that an applicant lied under oath when the finding is based on nothing more than the applicant's denial of accusations against him ... [The scope of the] inquiry must of necessity concern acts which occurred prior to the hearing. The Board should not conduct a hearing to consider applicant's alleged commission of specific acts of misconduct and without a finding that he committed the prior acts use his denial that he committed them as substantive evidence of his lack of moral character ..." Moore, supra, at 641. (Emphasis in original)

The Court then added a footnote in which it stated that when the prior acts are not dispositive of a character determination, the "applicant's false statement about the acts then take on added significance." Moore, supra nt.3 at 641. When the prior act is proved, the Board "may then find, if it is so convinced, that the applicant testified falsely under oath." Id.

But the North Carolina Supreme Court has not expressed a standard of proof by which the truth or falsity of an applicant's testimony is to be gauged.

In the opinion in the case sub judice, the

Court seeks to explain the discrepancy between the holding in the present case and the language in Moore, supra, at 641 by arguing that Petitioner in the case at bar did "more" than merely protest his innocence. (Appendix, p. 35) Such a distinction, however, is without substance given the unique nature of a bar admission proceeding. An applicant cannot invoke his 5th Amendment privilege against self-incrimination and refuse to testify as in a criminal proceeding. Indeed, Rule .0603(2) of the North Carolina Rules Governing Admission to the Practice of Law provides for the refusal to license any applicant

> "who fails to disclose fully to the board, whether requested to do so or not, any and all facts relating to any civil or criminal proceedings ... whether the same have been terminated or not." See In re Willis, supra (1975) 288 N.C.1 at 9.

It is hard to discern how a bald denial of any connection with alleged misconduct, as was the case in Rogers, supra, and Moore, supra, is any less "evasive or misleading" and possibly obstructing "full investigation into moral character" (Willis, supra, 288 N.C.1 at 18; Appendix,

p. 34) than the full explanation given by Petitioner here for his actions of July 14, 1975. The Court's holding in this case could lead to the anomalous result of an applicant falsely denying, with impunity, all connection with alleged misconduct while another applicant can incur denial of his application based on an innocent, truthful explanation, not subjectively believed by the Board, for suspicious circumstances to which he admits connection.

This very anomaly seems to have prompted the California Supreme Court to adopt a more stringent standard of proof for alleged false statements. Justice Tobriner, writing for the majority in Hall v. Committee of Bar Examiners, supra, (1979) 25 Cal.3d 730 at 745-746, remarked:

> "An individual's courageous adherence to his beliefs, in the face of a judicial or quasi-judicial decision attacking their soundness, may prove his fitness to practice law rather than the contrary. We therefore question the wisdom of denying an applicant admission to the bar if that denial rests on the applicant's choosing to assert his innocence regarding prior charges rather than to acquiesce in a pragmatic confession of guilt ..."

Indeed, giving the Board virtually unlimited

power, as here, to adjudicate truth or falsity based only on circumstantial evidence and uncontradicted testimony of the applicant offends basic fairness and due process. The Board, sitting in its unique tripartite role of judge, jury, and advocate, with the burden of proving misconduct, can raise questions requiring detailed explanations, pick apart the answers, find that there was misconduct, and then, without further fact-findings or analysis, make the quantum leap, based only on subjective indicators, to the conclusion that the applicant lied in his answers. Such latitude is susceptible of being grossly abused to obscure reasons for denial which would clearly not be rationally related to fitness to practice law. Such dangers are not inherent when truth or falsity of testimony is determined by the beyond a reasonable doubt standard.[2]

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[2]It should be noted that a conviction under North Carolina's perjury statute, G.S. 14-209, requires testimony of two witnesses or that of one witness and corroborating circumstances. State v. Allen (1963) 260 N.C. 220, 132 S.E.2d 302.

IV. THE BOARD AND THE COURT COULD NOT RATIONALLY CONCLUDE THAT PETITIONER TESTIFIED FALSELY.

The Court concluded that the

> "Board was presented with testimony that was internally inconsistent, intrinsically implausible and repeatedly contradicted by substantial evidence." (Appendix, p. 36)

In addition to the logical inconsistencies attendant with the Board's conclusions and the evidence overlooked by the Court which have already been discussed in Argument II, supra, there are other problems with viewing the evidence as supporting misconduct and false testimony on the part of Petitioner.

The Court states that Petitioner omitted from the interrogatories any mention of his suspicion that a prowler was in his apartment. It is true that Petitioner did not use the word "prowler" in his answers. He did state in answer to question 50, however, that:

> "...I assumed that the then unknown person was one of my roommates, but I did not know ... Eventually, [the person] retreated from the attic and I thought about coming out. But I felt, at that point, I would appear even more ridiculous for having hid. Too, at this time, I did not know who had

entered the attic or why." (ST 86-87, Appendix, p. 29, See ST 29, 32, 61-62)

Petitioner's character witness, Grayson L. Reeves, Jr., did not recall Petitioner mentioning anything about a prowler in two telephone conversations in early 1981 concerning the incident. Mr. Reeves did state, however, that he believed Petitioner's explanation (ST 64, 70, Appendix, p 29) after reading Petitioner's answers to interrogatories and Plaintiff's depositions in the civil suit, and that it was "consistent with what [Petitioner] told me about it." (ST 65)

The Court states that Petitioner expressed an interest in attics. (Appendix, p.21) The precise testimony indicates that the Petitioner stated he had an interest in construction techniques and that an attic afforded a means of determining the way a building is constructed. (ST 9, 40) Further, Petitioner stated that he had never heard of a common attic before and did not know that such an area existed over his and the adjoining apartment. (ST 17-18)

Additionally, character witnesses testified that Petitioner was under a great deal of pressure to finish his honors thesis prior to his originally scheduled start of law school in August, 1975 (ST 52, 70) and that he normally shuts himself off from people when he pursues academic work. (ST 56, 60, 62)

The Court states that Petitioner's prayer-for-judgment was tantamount to conviction based on State v. Griffin (1957) 246 N.C. 680. But in Griffin, a judgment was entered, a fine imposed, and then a prayer for judgment entered. No judgment was ever entered in the present case, despite a fine being imposed. The Judge entering that decision, himself, stated in a Certificate of Merit on Petition for Rehearing that he believed there to be insubstantial evidence of false testimony and misconduct by Petitioner.[3] (Appendix, pp. 75-82)

In sum, there were no material variations

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[3]Petitioner, on advice of his attorney, did not testify at the court trial in 1975.

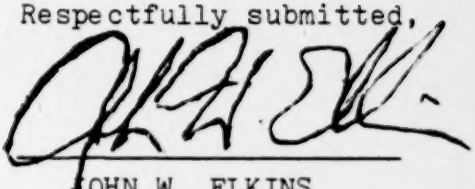
or inconsistencies in Petitioner's testimony. No testimony or evidence was adduced to contradict Petitioner's testimony. Assuming, arguendo, that minor inconsistencies were adduced in testimony, certainly such is insufficient, six years after the incident and based in part on informal conversations with character witnesses a few weeks prior to the hearing, to undermine and rebut Petitioner's considerable evidence of high moral character. The stacking of a circumstantial inference of lying, on top of a finding of misconduct has been disapproved by other courts. See e.g. Florida Board of Bar Examiners Re: L. K.D. (1981) ___ Fla. ___, 297 So.2d 673. In short, no competent evidence supported the conclusion that Petitioner lied to the Board. The decision violated due process. Schware, supra, 240.

CONCLUSION

For the foregoing reasons, this Court should grant a writ of certiorari to settle the important question of whether Petitioner was denied due process of law in being denied admission to the Bar of North Carolina.

Dated: October 3, 1983

Respectfully submitted,



JOHN W. ELKINS
1500 Mills Tower
220 Bush Street
San Francisco, CA. 94104

Petitioner In Pro Per

CERTIFICATE OF SERVICE BY MAIL

I, JOHN W. ELKINS, do hereby declare under penalty of perjury the following:

1) That I am a United Statescitizen over the age of eighteen.

2) That I am an attorney duly licensed to practice law in all Courts of the State of California.

3) That my business address is 1500 Mills Tower, 220 Bush Street, San Francisco, CA. 94104.

4) That on October 5, 1983, I deposited the attached PETITION FOR WRIT OF CERTIORARI in an envelope with prepaid, first-class postage thereon sufficient to cover the cost of mailing said document and placed THREE COPIES of said document in said envelope and deposited said envelope in a United States Mail receptacle at Winston-Salem, North Carolina and that there is regular postal service through the United States Mail between said place of mailing and the place to which said document was mailed as hereinafter appears and that said envelope was addressed as follows:

HARRY H. HARKINS, JR.
Assistant Attorney General
of the State of North Carolina
Post Office Box 17100
Raleigh, North Carolina 27619

Executed this 5th day of October, 1983 at Winston-Salem, North Carolina.

JOHN W. ELKINS
Declarant